

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CIVIL ACTION NUMBER

3:05-CV-0741-M

BARRY BUCKHANON and RODNEY FRALEY,
Plaintiffs,

vs.

HUFF & ASSOCIATES CONSTRUCTION COMPANY,
INC.,
Defendant.

DEPOSITION TESTIMONY OF:
RODNEY FRALEY

June 8, 2006
11:15 a.m.

COPY

COURT REPORTER:

Gwendolyn P. Timbie, CSR

EXHIBIT

E

1 S T I P U L A T I O N S

2 IT IS STIPULATED AND AGREED by and
3 between the parties through their
4 respective counsel that the deposition of
5 RODNEY FRALEY, may be taken before
6 Gwendolyn P. Timbie, Certified Shorthand
7 Reporter and Notary Public, State at
8 Large, at the law offices of Bowles &
9 Cottle, Tallassee, Alabama, on June 8,
10 2006, commencing at approximately
11 11:15 a.m.

12 IT IS FURTHER STIPULATED AND
13 AGREED that the signature to and the
14 reading of the deposition by the witness
15 is waived, the deposition to have the same
16 force and effect as if full compliance had
17 been had with all laws and rules of Court
18 relating to the taking of depositions.

19 IT IS FURTHER STIPULATED AND
20 AGREED that it shall not be necessary for
21 any objections to be made by counsel to
22 any questions, except as to form or
23 leading questions, and that counsel for

1 the parties may make objections and assign
2 grounds at the time of trial or at the
3 time said deposition is offered in
4 evidence, or prior thereto.

5 Please be advised that this is the
6 same and not retained by the Court
7 Reporter, nor filed with the Court.

I N D E X

EXAMINATION BY:	PAGE NO.
Mr. Wilson	6
Certificate	48

LIST OF EXHIBITS

EXHIBITS	PAGE NO.
Defendants' 1	33
Charge of discrimination	

A P P E A R A N C E S

FOR THE PLAINTIFFS:

JAMES R. BOWLES, Esquire
Bowles & Cottle
2 South Dubois Avenue
Tallasse, Alabama 36078

FOR THE DEFENDANT:

BENJAMIN C. WILSON, Esquire
Rushton, Stakely, Johnston & Garrett,
P.A.
184 Commerce Street
Montgomery, Alabama 36104

ALSO PRESENT:

BARRY BUCKHANON

1 I, Gwendolyn P. Timbie, Certified
2 Shorthand Reporter and Notary Public for
3 the State of Alabama at Large, acting as
4 Commissioner, certify that on this date,
5 pursuant to the Federal Rules of Civil
6 Procedure, and the foregoing stipulation
7 of counsel, there came before me at the
8 law offices of Bowles & Cottle, Tallassee,
9 Alabama, commencing at approximately
10 11:15 a.m., on June 8, 2006, Rodney
11 Fraley, plaintiff in the above cause, for
12 oral examination, whereupon the following
13 proceedings were had:

14
15 RODNEY FRALEY,
16 having been first duly sworn, was examined
17 and testified as follows:

18
19 EXAMINATION BY MR. WILSON:

20 Q Would you state your name,
21 please, sir?

22 A Rodney Fraley.

23 Q Mr. Fraley, my name is Ben

1 Wilson. I represent Huff and Associates.
2 I'm here to take your deposition. Is that
3 your understanding?

4 A Yes, sir.

5 Q And you sat through Barry
6 Buckhanon's deposition that just got
7 through; right?

8 A Yes, sir.

9 Q Heard all those questions,
10 didn't you?

11 A Yes, sir.

12 Q You understand you're under
13 oath?

14 A Yes, sir.

15 Q Have you ever given one
16 before, a deposition?

17 A No, sir.

18 Q Same things apply. If you
19 don't understand my question, let me know
20 and I'll repeat it for you. Okay?

21 A Okay.

22 Q And if you'll let me finish
23 asking the question before you start, that

1 would be helpful to the court reporter.

2 Okay?

3 A Okay.

4 Q If you need to stop and take a
5 break, let me know. All right?

6 A All right.

7 Q All right. What's your
8 current address?

9 A 640 Muskogee Trail.

10 Q In Tallassee?

11 A Yes, sir.

12 Q How long have you lived there?

13 A About fifteen years.

14 Q Who lives there with you
15 currently?

16 A My sister and her four
17 children.

18 Q What's your sister's name?

19 A Kimberly Graham.

20 Q Graham?

21 A Yes, sir.

22 Q How old is her oldest child?

23 A Fifteen.

1 Q Are you married?

2 A No, sir.

3 Q Have you ever been married?

4 A No, sir.

5 Q Do you have any children?

6 A No, sir.

7 Q Do you have any other
8 relatives in this part of the state -- I
9 call it East Alabama -- East Central
10 Alabama -- other than --

11 A Yes.

12 Q -- your sister?

13 A Yes, sir. I have another
14 sister and three more brothers.

15 Q What's your other sister's
16 name?

17 A Nia (phonetic) Gant.

18 Q Where does she live?

19 A East Tallassee.

20 Q Is she married?

21 A Yes, sir.

22 Q What's her husband's name?

23 A Adolphus Gant.

1 Q Do they have any children over
2 the age of eighteen?

3 A No, sir.

4 Q And tell me your brothers'
5 names.

6 A Kevin, Tyrone, and Charles.

7 Q Are they all Fraleys?

8 A Yes, sir.

9 Q Where do they live?

10 A Tallassee.

11 Q All of them?

12 A Yes, sir.

13 Q Are any of them married?

14 A There's one married and two
15 divorced.

16 Q The one who's married, what's
17 his wife's name?

18 A Chris Fraley.

19 Q The divorcees, what are their
20 names, the women?

21 A Katrina Smith and Deloris
22 Gant.

23 Q All right. Are either of your

1 parents still living?

2 A No, sir.

3 Q Do you have any other
4 relatives other than those in -- let me
5 kind of give you a feel for what I'm
6 talking about. Lee County, Macon County,
7 Tallapoosa.

8 A No, sir.

9 Q Elmore.

10 A No, sir.

11 Q Any other relatives in
12 Alabama?

13 A Yes, sir. Aunties and
14 uncles.

15 Q Do any of them live in this
16 part of the state, kind of East Central
17 Alabama?

18 A No. All live in Tallassee.

19 Q Tallassee?

20 A Yes, sir.

21 Q What are their last names?

22 A Driscalls.

23 Q Driscall?

1 A Yes. And the Gants.

2 Q Gants?

3 A Yes, sir.

4 Q Are you currently employed?

5 A I work for Hilyer, but I'm not
6 full time.

7 Q Same place as Mr. Buckhanon?

8 A Yes, sir.

9 Q Part time or -- how does that
10 work? As needed?

11 A Yeah. When we ain't got
12 nothing to do -- I help my brother. He's
13 a subcontractor, dry wall. And when he
14 needs my help, I'll go help him.

15 Q Is he self-employed?

16 A Yes, sir.

17 Q And which brother is this?

18 A It's Kevin.

19 Q Kevin Fraley?

20 A Yes, sir.

21 Q And where does he typically do
22 jobs?

23 A Montgomery.

1 Q And when you help him, does he
2 pay you?

3 A Yes, sir.

4 Q Pay you in cash?

5 A Yes, sir.

6 Q Y'all just come up with a
7 figure?

8 A It all depends on what the job
9 pays, you know, what job I perform.

10 Q Right. And y'all work
11 something out based on what you do and
12 what it takes?

13 A Yes, sir. As far as my part
14 of getting paid.

15 Q Yeah. Right. I'm talking
16 about your brother.

17 A Yes, sir.

18 Q Does your brother just give
19 you some amount of money at the end of the
20 job?

21 A Well, he pays me -- like,
22 whenever he gets a check, he'll pay me
23 some, and it will just equal up to what

1 I'm supposed to get at the end of a job.

2 Q He doesn't withhold any taxes
3 on you, does he?

4 A No, sir.

5 Q And then Hilyer, you kind of
6 work there when they need some help?

7 A Yes, sir.

8 Q Have you had any other jobs
9 other than Hilyer or with your brother
10 since leaving Huff?

11 A Yes, sir.

12 Q What else?

13 A I had hung red iron. I worked
14 for Jacco's. Jacco's in Montgomery. I
15 worked with them.

16 Q When?

17 A It's, like, three or four
18 months after I left Huff and Associates.

19 Q What was your rate of pay
20 there?

21 A Ten dollars an hour.

22 Q Why did you leave there?

23 A Transportation.

1 Q Who was your supervisor at --
2 what's the name of the place?

3 A Jacco.

4 Q Jacco?

5 A Yes, sir.

6 Q Do you remember your
7 supervisor's name?

8 A Michael Vick.

9 Q And do you have any set rate
10 of pay at Hilyer?

11 A Excuse me.

12 Q Go ahead.

13 A Jeff Vick. That's Jeff Vick.

14 Q Do you have any set rate of
15 pay when you do work for Hilyer?

16 A He just pays me a little -- a
17 little a day. You know, if sometimes I
18 work a long time, he'll pay me at the end
19 of the week.

20 Q Does Hilyer withhold any taxes
21 on your money?

22 A No, sir.

23 Q Any other employments since

1 you left Huff?

2 A That's it.

3 Q Did you graduate from high
4 school?

5 A No, sir.

6 Q Did you attend high school?

7 A I quit in the eleventh.

8 Q Tallassesee?

9 A Yes, sir.

10 Q Any other education since
11 then?

12 A No, sir.

13 Q When did you quit the eleventh
14 grade? What year are we talking about
15 here?

16 A '93.

17 Q Now, as I understand it, you
18 went to work at Huff on or about June 1,
19 2004?

20 A Yes, sir.

21 Q Same day Mr. Buckhanon went?

22 A Yes, sir.

23 Q And as I understand it, the

1 two of you were told about some need up
2 there by Mr. Connell?

3 A Yes, sir.

4 Q Who did he talk to first, you
5 or Mr. Buckhanon?

6 A He talked to both of us at the
7 same time.

8 Q Where was this conversation?

9 A At Charles Hilyer's.

10 Q Does Connell work there too?

11 A No. He just come by.

12 Q Before you went to Huff, did
13 you work anywhere else other than Hilyer?

14 A Just besides with my brother.

15 Q Tell me if this is -- as I
16 understand it, Mr. Connell told you that
17 they had some need for some laborers up at
18 Huff --

19 A Yes, sir.

20 Q -- on this job in Auburn;
21 right?

22 A Yes, sir.

23 Q And the two of you rode up

1 there with Mr. Connell?

2 A Yes.

3 Q And did you speak with
4 Mr. Myers when you got there?

5 A Yes, sir. We sat in the
6 trailer, and we -- we talked in the
7 trailer.

8 Q Tell me what you remember
9 about talking with Mr. Myers.

10 A He was just asking all what
11 type of work have we done before, have we
12 ever done construction, you know, what
13 kind of skills we've got, all -- what can
14 we do.

15 Q And did you fill out any
16 paperwork?

17 A Application and tax papers.

18 Q Did you fill out any physical
19 health questionnaire?

20 A No, sir. Not that I can
21 remember.

22 Q So Mr. Myers hired you?

23 A Yes, sir.

1 Q As a what?

2 A Laborer.

3 Q Laborer? Okay. And how many
4 people were on that job site when you
5 started working there?

6 MR. BOWLES: Let me ask you
7 this: When you ask him that question, are
8 you just talking about employees of Huff
9 or --

10 MR. WILSON: Yeah. For now.

11 MR. BOWLES: -- including the
12 subs?

13 Q Well, let's take the total
14 number that you remember of everybody;
15 subs, Huff. I'm trying to get a feel for
16 how many people were doing work on that
17 site.

18 A I know it was probably about
19 thirty, thirty-five people.

20 Q And of those, do you have any
21 feel for how many of them are employed
22 directly by Huff, as Huff employees?

23 A I'll say about five or six

1 that's Huff employees that I could
2 remember.

3 Q And the rest of them were
4 subcontractors?

5 A Yes, sir.

6 Q Who do you remember was
7 working there as a Huff employee when you
8 started there other than Connell,
9 Buckhanon, and -- who else? Myers?

10 A Myers, me, and Buckhanon,
11 Connell, and James Langley and Bobby's
12 son. He would come by occasionally.

13 Q What's his name?

14 A Mark.

15 Q Tell me what you did in the
16 position of a laborer.

17 A We was cleaning up the bricks
18 around the whole building and just
19 carrying wood and stacking the wood up.
20 Just all kind of little stuff like that.

21 Q Were you assigned to anybody
22 in particular?

23 A Brad Connell.

1 Q He was a carpenter; right?

2 A Yes, sir.

3 Q Now, Mr. Buckhanon talked
4 about the project manager, Quinton, coming
5 around here and there. Do you remember
6 that?

7 A Yes, sir.

8 Q Did you know who he was?

9 A Yes, sir.

10 Q Did you know he was a project
11 manager?

12 A Yes, sir.

13 Q Did you understand that he was
14 Bobby Myers' superior?

15 A Yes, sir.

16 Q Do you remember Mr. Myers
17 picking you and Mr. Buckhanon up, taking
18 you to and from the job site?

19 A Yes, sir.

20 Q And how frequently did that
21 happen?

22 A It was -- out of two months,
23 it was probably a month that we went to

1 work with him.

2 Q Did he offer to pick you up
3 and bring you back?

4 A Yes, sir.

5 Q Did he take any other
6 employees to and from the job site?

7 A No, sir.

8 Q And Mr. Buckhanon told me he
9 got there about -- in the morning about
10 seven?

11 A Yes. Yes, sir.

12 Q And y'all had worked till what
13 time?

14 A Like, two to three-thirty.
15 Sometimes we worked till five.

16 Q Now, as I understand it, you
17 quit your job at Huff on or about July 27,
18 2004. True?

19 A Yes, sir.

20 Q So do you have any reason to
21 dispute that you worked there from about
22 June 1 to July 27, 2004? Does that sound
23 right to you?

1 A Yeah. Somewhere in there.

2 Q About eight weeks maybe?

3 A Yes, sir.

4 Q What is your recollection of
5 your initial rate of pay at Huff?

6 A Started off at, like, eight
7 fifty.

8 Q And then when you left what
9 was it?

10 A Nine dollars.

11 Q Do you recall Mr. Myers
12 raising your rate of pay?

13 A Yes, sir.

14 Q Did he talk to you and tell
15 you why he was raising you?

16 A It was because we had worked
17 over there, I think it was, like -- if we
18 worked, like, thirty days -- he told us in
19 thirty days he'd see how we worked and
20 performed, he would raise our pay.

21 Q When y'all went on the job
22 site on or about June 1, had you ever done
23 any work for Huff before that?

1 A No, sir.

2 Q Have you done any work for
3 them since July 27?

4 A No, sir.

5 Q Were you present for
6 Mr. Buckhanon's conversation with
7 Mr. Myers about his knee?

8 A Yes, sir.

9 Q What do you remember being
10 said about that?

11 A When we first got there
12 filling applications out, Mr. Myers asked
13 did we have anything that we can do or
14 will stop us from doing the job. And
15 Mr. Buckhanon told him he had a bad knee.
16 He told him -- he said, as long as it's on
17 the ground, said he could do it. But he
18 said he'd have a problem about getting up
19 high.

20 Q Did Mr. Myers put
21 Mr. Buckhanon into tasks that required him
22 to be above ground?

23 A Yes, sir.

1 Q Do you ever recall
2 Mr. Buckhanon reminding Mr. Myers of his
3 problem with heights?

4 A Yes, sir.

5 Q Tell me what you remember
6 about that.

7 A It was -- we was getting up --
8 we had to get up on the walls and pour the
9 concrete down in the walls. And
10 Mr. Buckhanon told him that he didn't want
11 to get up there because he'd be scared
12 that he would fall. And Mr. Myers told
13 him -- said to get on up there anyway. In
14 other words, he had raised and yelling his
15 voice and sort of like nudging
16 Mr. Buckhanon.

17 Q What do you mean nudging him?

18 A Like, pushing him, telling him
19 to go on, get on up there.

20 Q And what happened after that?

21 A Mr. Buckhanon, he got up there
22 and started helping.

23 Q Was he able to do the jobs

1 that required being up higher?

2 A Yes, sir.

3 Q Now, Mr. Fraley, you've made
4 the essentially identical claims in this.
5 case as Mr. Buckhanon; right?

6 A Yes, sir.

7 Q And you, again, sat through
8 Mr. Buckhanon's deposition and heard his
9 testimony. True?

10 A Yes, sir.

11 Q Can you tell me about any
12 other instance where Mr. Myers used racial
13 slurs to you or in your presence other
14 than what Mr. Buckhanon talked about?

15 A The conversation in the
16 trailer, Mr. Myers, he said, y'all -- he
17 said, I'm not -- he said, y'all are --
18 y'all don't know nothing. Y'all niggers
19 don't know nothing. That's what he said.

20 Q All right. Are you through?
21 I didn't mean to cut you off.

22 A Oh, yes, sir. Yes, sir.

23 Q Who all was present for that

1 conversation in the trailer?

2 A It was me and Mr. Buckhanon
3 and James Langley and Bobby Myers.

4 Q Let me back up and ask you,
5 Mr. Buckhanon told me about an instance
6 where he heard Mr. Myers over the two-way
7 radio make a racial statement to Jimmy
8 Langley. Remember that?

9 A Yes, sir.

10 Q Now, did you hear him say
11 that?

12 A Yes, sir.

13 Q Were you standing there too?

14 A Yes, sir.

15 Q Does your recollection of what
16 was said vary from what Mr. Buckhanon said
17 here today?

18 A No, sir. It's the same.

19 Q So as we sit here today, you
20 can recall two occasions where Bobby Myers
21 made racial slurs in your presence?

22 A Yes, sir.

23 Q The time with the two-way

1 radio with Jimmy Langley?

2 A Yes, sir.

3 Q And then the time when the
4 four of y'all were eating in the trailer?

5 A Yes, sir.

6 Q And would Bobby Myers
7 typically eat lunch with y'all?

8 A Yes, sir.

9 Q When he was on the site?

10 A Yes, sir.

11 Q And what was your
12 understanding of who Mr. Myers was
13 referring to when he made the comment in
14 the trailer?

15 A He was referring to us.

16 Q Who is "us"?

17 A Me and Mr. Buckhanon. Because
18 when he was talking -- when he was saying
19 it, he was looking directly at me and
20 Mr. Buckhanon.

21 Q And when he says things like
22 you don't know anything or your kind don't
23 know anything, was there any specific task

1 or job that he was talking about that you
2 supposedly didn't know anything about
3 doing?

4 A Yes, sir.

5 Q What was it?

6 A We was putting the headers
7 above the doors, and we had to use the
8 nail guns. And I told Mr. Bobby, I said,
9 I don't know how to use the nail gun. He
10 told me to get up there anyway.

11 Q Had you never used a nail gun
12 with your brother?

13 A No, sir.

14 Q Or on the Huff job site?

15 A No, sir.

16 Q Were you able to use it?

17 A Yes, sir.

18 Q Were you able to get that task
19 done, with the nail gun?

20 A No, sir. Not by myself.

21 Q Who helped you?

22 A Brad Connell.

23 Q Are you aware -- well, did you

1 witness any other -- Mr. Myers using any
2 other racial slurs or derogatory terms
3 other than those two instances we talked
4 about?

5 A No, sir.

6 Q The Hispanics on the job site,
7 Mr. Buckhanon told me he remembered two.

8 A Yes, sir.

9 Q Is that consistent with your
10 recollection?

11 A Yes, sir.

12 Q Do you know their names?

13 A No, sir.

14 Q Do you know where they are?

15 A Lowndes -- Lowndes County is
16 the only thing I can remember where they
17 said they was from.

18 Q They said they were from
19 Lowndes County?

20 A Yes, sir.

21 Q Did you ever hear Mr. Myers
22 use racially derogatory terms toward the
23 Hispanic workers?

1 A No, sir.

2 Q Now, we've heard that
3 Mr. Myers would cuss and kind of get in
4 people's faces about getting things done;
5 right?

6 A Yes, sir.

7 Q Would he do that to all the
8 employees, black or white?

9 A Yes, sir.

10 Q Did you ever tell Mr. Myers --
11 or did you ever make any statement to
12 Mr. Myers to the effect that you didn't
13 appreciate his behavior or his language?

14 A No, sir.

15 Q Did you ever make any
16 complaint to Quinton, the project manager?

17 A No, sir.

18 Q Did you ever consider doing --
19 complaining to Mr. Myers or Mr. Quinton?

20 A No, sir.

21 Q Did you ever see Mr. John Huff
22 on the job site?

23 A Yes, sir.

1 Q Did you know who he was?

2 A Yes, sir.

3 Q Did you ever consider making
4 any complaint to Mr. Huff?

5 A No, sir.

6 Q When you took the job there at
7 Huff, were you given any documentation or
8 paperwork to keep concerning, you know,
9 your employment there?

10 A No, sir.

11 Q Do you recall or were you
12 present for the discussion between
13 Mr. Myers and Mr. Buckhanon concerning
14 this business about coming in from the
15 rain and the lightning?

16 A Yes, sir.

17 Q Tell me what you remember
18 about that.

19 A We was working on the party
20 barn. And before Mr. -- before Mr. Myers
21 called and ordered the concrete, me and
22 Brad Connell, we told Mr. Myers that it
23 looked like it was going to rain. We

1 don't need to call the concrete truck.
2 And he said he was going to call them
3 anyway.

4 As soon as we got up there and
5 started pouring the concrete, it started
6 pouring down rain. When we got started
7 halfway on the wall, it started pouring
8 down rain. And Mr. Myers told us to keep
9 going, so we kept going.

10 Q Did you hear Mr. Myers tell
11 Mr. Buckhanon to keep going and not quit
12 because of the rain?

13 A Yes, sir. He told all of us.

14 Q Who else was involved in
15 that?

16 A Mr. Buckhanon and the two
17 Mexicans.

18 Q Tell me about -- well, your
19 claim that you filed --

20 A Yes, sir.

21 (WHEREUPON, a document was
22 marked as Defendant's Exhibit Number 1 and
23 is attached to the original transcript.)

1 Q Let me just show it to you
2 real quick. It Defendant's 1. Take a
3 look at that, Mr. Fraley, and tell me
4 if -- I'll represent to you that that is
5 the charge of discrimination that you
6 filed or was filed on your behalf with the
7 EEOC. And do you remember preparing that?

8 A Yes, sir.

9 Q Is that your signature on the
10 bottom?

11 A Yes, sir.

12 Q Did you provide the
13 information contained in that document?

14 A Yes, sir.

15 Q And, specifically, I'm talking
16 about the narrative here.

17 A Yes, sir.

18 Q All right. In this statement,
19 it indicates that you quit your job with
20 Huff and Associates on or about July 27,
21 2004. Does that sound right? Is that
22 accurate?

23 A Say it again.

1 Q Yes, sir. Your statement says
2 you quit your job with Huff on or about
3 July 27 --

4 A Yes, sir.

5 Q -- 2004.

6 A Yes, sir.

7 Q Is that true?

8 A Yes, sir.

9 Q Tell me how that came about
10 and who you talked to and -- I mean, how
11 did you quit? Why did you quit and how
12 did you quit?

13 A Well, I quit because I just --
14 I didn't want to deal with Mr. Myers
15 anymore just talking to me any kind of
16 way. And I just decided to quit because I
17 didn't want to go back and go hearing that
18 fuss every day.

19 Q Who did you tell -- did you
20 tell anybody you were quitting?

21 A No, sir.

22 Q Did you just walk -- leave the
23 job and not come back?

1 A Yes, sir.

2 Q Did you go back ever to
3 collect a paycheck or anything like that?

4 A Yes, sir.

5 Q Did you go back with
6 Mr. Buckhanon to get your paycheck?

7 A Yes, sir.

8 Q Tell me about that. Did you
9 see Mr. Myers on that day?

10 A We got there. It was -- if I
11 can go back. The week before we got our
12 check, that's when we got the five dollars
13 from Mr. Myers. And that evening we come
14 by the bank. And we told Mr. Myers, said,
15 you can stop right here and we'll pay you
16 your five dollars. He said he don't fool
17 with that bank, you know. Just don't go
18 out and spend all your money on drugs.
19 Just have my five dollars.

20 Then when we got our check,
21 Mr. Myers and James Langley, they was
22 leaving. And we pulled up and got out of
23 the truck. We asked Mr. Myers for our

1 check. And soon -- Mr. Buckhanon, he
2 asked Bobby, are you going to give us our
3 check? He said, I ain't giving you
4 nothing till you give me my five dollars,
5 you ignorant niggers. Y'all think y'all
6 just can keep some. Just going on and
7 on. And Mr. Garrett, he was standing
8 there, and he said, man, I wouldn't go
9 through that. He wouldn't never talk to
10 me like that.

11 Q Did both of you owe the five
12 dollars?

13 A Yes. Five apiece.

14 Q And this conversation was
15 after you had quit?

16 A Yes, sir.

17 Q And so did you receive your
18 check that day?

19 A Yes, sir.

20 Q How did you get it?

21 A Mr. Myers gave it to us.

22 Q Have any further conversation
23 with him since then?

1 A No, sir.

2 Q Ever?

3 A No, sir.

4 Q Ever seen him around town?

5 A I seen him, like, one or two
6 times, but I didn't say nothing to him.

7 Q Can you tell me the names of
8 any other persons who could speak to
9 Mr. Myers -- first of all, speak to
10 Mr. Myers use of racial slurs on the job
11 site? Other than Mr. Buckhanon and Jimmy
12 Langley, can you tell me of any other --
13 any other names of any other people that
14 could speak to that?

15 A No, sir.

16 Q All right. Let me broaden the
17 question. Other than Mr. Buckhanon,
18 Mr. Langley, and Mr. Connell, can you tell
19 me the names of any other people who could
20 speak to the nature of Mr. Myers' language
21 and behavior on the job site?

22 A Brad Connell.

23 Q Anybody other than him and

1 Mr. Buckhanon and Mr. Langley?

2 A That's people that's on the
3 job or just --

4 Q Yeah.

5 A No. That's it. Just Brad
6 Connell.

7 Q What about people that weren't
8 on the job?

9 A Jerry Garrett.

10 Q Was Jerry Garrett ever
11 employed by Huff?

12 A No, sir.

13 Q He just gave y'all a lift to
14 pick up your checks?

15 A Yes, sir.

16 Q Is he a friend of yours?

17 A Yes, sir.

18 Q Did you ever pay Mr. Huff -- I
19 mean, Mr. Myers the money -- five dollars
20 back?

21 A No, sir.

22 Q Other than the instances we've
23 talked about, can you tell me any other

1 occasion where Mr. Myers used racial slurs
2 to you or in your presence?

3 A No, sir.

4 Q Have you ever been arrested?

5 A Yes, sir.

6 Q For what?

7 A Possession of marijuana.

8 Q When?

9 A Like, '98.

10 Q And how was that resolved?

11 A Probation.

12 Q Any jail time?

13 A No. No, sir.

14 Q Was that arrest here in

15 Tallassee?

16 A Elmore County.

17 Q How long was your probation?

18 A A year.

19 Q And you served that out?

20 A Yes, sir.

21 Q Any other arrest?

22 A Another -- all of them

23 possession of marijuana. 2001.

1 Q So two arrests for marijuana
2 possession?

3 A Yes.

4 Q What was the penalty for the
5 second time?

6 A Supervised probation.

7 Q For how long?

8 A Two years.

9 Q No jail time?

10 A No, sir.

11 Q Suspended sentence?

12 A Yes, sir.

13 Q Did you serve that probation?

14 A Yes, sir.

15 Q Any other arrest?

16 A Just minor traffic tickets.

17 Q Anything other than that?

18 A No, sir.

19 Q Did you plead guilty on these
20 marijuana charges?

21 A Yes, sir.

22 Q Did you have a lawyer?

23 A Yes, sir.

1 Q Who was it?

2 A Mike Perdue.

3 Q This second charge, was it
4 also in Elmore County?

5 A Yes, sir.

6 Q Since leaving Huff, have you
7 had any other source of income other than
8 with your brother and Hilyer?

9 A Just with my brother.

10 Q Have you worked at Hilyer at
11 all since you left Huff?

12 A Yes, sir.

13 Q You've been paid for that,
14 haven't you?

15 A Yes, sir.

16 Q Have you ever filed a lawsuit
17 other than this one?

18 A No, sir.

19 Q Is there anything else about
20 your claims against Huff that you consider
21 to be important that we haven't talked
22 about?

23 A Johnny McDade, he was working,

1 doing something. And Mr. Myers told him,
2 said, you stupid. You don't know
3 nothing. And that day -- Mr. McDade quit
4 that same day.

5 Q Same day as you?

6 A No. Same day Mr. Myers made
7 that comment towards him, saying that he
8 don't know nothing. He's stupid.
9 Mr. McDade said he's not going to let
10 anybody sit around and call him stupid.
11 He said he'll just quit.

12 Q Did you hear Mr. Myers make
13 any racial statement to Mr. McDade?

14 A No, sir.

15 Q Is he white or black?

16 A White.

17 Q So Mr. McDade just quit
18 because of the way he was spoken to?

19 A Yes, sir.

20 Q Have you talked to Mr. McDade
21 since you left Huff?

22 A No, sir.

23 Q Where does he -- do you know

1 where Mr. McDade lives?

2 A Not right now I don't.

3 Q Mr. Connell -- if I remember
4 Mr. Buckhanon right, he said Mr. Connell
5 actually left Huff employment before y'all
6 did?

7 A Yes, sir.

8 Q And why did he leave?

9 A Because him and Bobby
10 constantly arguing every day.

11 Q About what?

12 A Just stuff that Mr. Myers
13 would say towards him. He'd call him
14 stupid, he don't know nothing, just all
15 kinds of stuff like that.

16 Q Anybody else quit while you
17 were there because of Mr. Myers?

18 A Not that I recall.

19 Q Did Mr. Myers fire anybody
20 else while you were there?

21 A Not as I can recall right now.

22 Q As I understand it from
23 Mr. Buckhanon, Mr. Myers told you that

1 Mr. Buckhanon had been fired?

2 A Yes.

3 Q Tell me what he told you about
4 that.

5 A Us -- we was going --
6 Mr. Myers picked me up. And I asked him
7 one day, I said, you're not going to stop
8 and get Barry? He said, no, sir. Don't
9 worry about Barry. Barry is fired. So I
10 went to work that day. When I got home, I
11 went by Mr. Buckhanon's house, and I told
12 him that Mr. Myers said he was fired.

13 Q Did Mr. Myers say anything
14 else to you about firing Mr. Buckhanon?

15 A No, sir.

16 Q As I understand it, you quit
17 the next day. Does that sound right to
18 you?

19 A I can't recall that.

20 Q Well, I'm getting that from
21 these charges that you guys filed with the
22 EEOC. Mr. Buckhanon's statement says that
23 he was terminated on July 26, 2004, and

1 your statement says, I quit my job on July
2 27, 2004. Does that sound right?

3 A Yes.

4 Q So the day that Mr. Huff --
5 Mr. Myers -- the day that Mr. Myers picked
6 you up and told you that he had let
7 Mr. Buckhanon go, in fact, was your last
8 day?

9 A I think so.

10 Q You do not think so?

11 A I said I do.

12 Q That's fine. Did Mr. Myers
13 show up to pick you up the day after you
14 quit?

15 A Yes, sir.

16 Q And what did you tell him?

17 A I didn't go outside. Just
18 stayed in the house.

19 Q And he didn't come back after
20 that, did he?

21 A No, sir.

22 Q That's all I have. Thank you
23 for your time.

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MR. BOWLES: No questions.

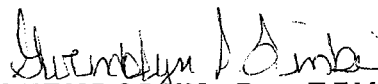
FURTHER DEPONENT SAITH NOT

C E R T I F I C A T E

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I hereby certify that the above
and foregoing deposition was taken down by
me in stenotype, and the questions and
answers thereto were transcribed by means
of computer-aided transcription, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.


GWENDOLYN P. TIMBIE, CSR
Certificate No: AL-CSR-569

My Commission Expires
March 4, 2009

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

CHARGE NUMBER

☐ FEPA
☒ EEOC

130-2004-04247

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)
Mr. Rodney Jermaine FraleyHOME TELEPHONE (Include Area Code)
(334) 283-5092STREET ADDRESS
640 Muskogee TrailCITY, STATE AND ZIP CODE
Tallassee, Alabama 36078DATE OF BIRTH
05/21/73

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME Huff & Associates
Construction Co., Inc.NUMBER OF EMPLOYEES, MEMBERS
UnknownTELEPHONE (Include Area Code)
(334) 749-0052STREET ADDRESS
1220 Fox Run Pkwy.; PO Box 2427; Opelika, Alabama 36803-2427

CITY, STATE AND ZIP CODE

COUNTY
Lee

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ AGE
☐ RETALIATION ☐ NATIONAL ORIGIN ☐ DISABILITY ☐ OTHER (Specify)
DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)☐ CONTINUING ACTION

PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

My name is Rodney Jermaine Fraley and I reside at 640 Muskogee Trail in Tallassee, Alabama 36078. I am currently 31 years of age with a date of birth of May 21, 1973. I completed the 11th grade. My race is black or African American.

On or about June 1, 2004, I went to work for Huff & Associates Construction Company, Inc. (hereinafter "Huff & Associates") as a laborer. The superintendent on the job site where I was initially employed was a long-time employee of Huff & Associates by the name of Bobby Myers. During the entire time that I worked for Huff & Associates, Mr. Myers was constantly cursing, ridiculing, insulting and otherwise intimidating the minority employees working under his supervision. Mr. Myers routinely used racial slurs in referring to black employees. Mr. Myers made no attempt to hide or suppress his racist views. I have personally heard Mr. Myers use a variety of verbally derogatory terms in referring to black and other minority employees. On one occasion I overheard Mr. Myers say, "I ain't going to put up with a bunch of ignorant niggers on my job". On another occasion Mr. Myers became enraged over something and in speaking directly to me and another black employee by the name of Barry Khanon said, "Your kind don't know anything". In that same conversation Mr. Myers, in referring to another

(See Continuation Page)

I intend this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT


SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

e 8/30/04

Charging Party (Signature)

The Particulars Are:
(Continuation Page)

black employee, said, "Niggers like him don't know anything". Mr. Myers also made insulting and denigrating comments to the Hispanic workers on the job site. For instance, he would tell them that "they needed to go back to Mexico and that they did not know anything". Since Mr. Myers was the highest ranking employee of Huff & Associates on the job site, his constant cursing, ridiculing, insulting and otherwise intimidating behavior created a hostile work environment for all minority employees including myself.

I finally quit my job with Huff & Associates on or about July 27, 2004 because I could no longer tolerate the verbal and other abuse directed at me by Mr. Myers.

AUG 31 2004